

EDMUND G. BROWN JR.
Attorney General of the State of California
DANE R. GILLETTE
Chief Assistant Attorney General
GERALD A. ENGLER
Senior Assistant Attorney General
PEGGY S. RUFFRA
Supervising Deputy Attorney General
ALLEN R. CROWN
Deputy Attorney General
State Bar No. 56818
455 Golden Gate Avenue, Suite 11000
San Francisco, CA 94102-7004
Telephone: (415) 703-5847
Fax: (415) 703-1234
E-mail: Allen.Crown@doj.ca.gov

Attorneys for Respondent

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF CALIFORNIA
SAN FRANCISCO DIVISION

MARCUS JAMES HOOKS,

Petitioner,

v.

WARDEN OF AVENAL STATE PRISON,

Respondent.

C 07-3604 JSW (PR)

**ANSWER TO ORDER TO
SHOW CAUSE**

Respondent provides this answer to the Order to Show Cause why the petition for writ of habeas corpus should not be granted.

**I.
CUSTODY**

Petitioner is lawfully in the custody of the California Department of Corrections and Rehabilitation as the result of a judgment of conviction in Santa Clara County in Case No. CC448196.

On April 22, 2005, the District Attorney filed an amended information in Santa Clara

1 County Superior Court accusing petitioner, Marcus James Hooks, as follows: count one, concealing
2 an event affecting the right to an insurance benefit in violation of California Penal Code §
3 550(b)(3);^{1/} count two, presenting a fraudulent insurance claim in violation of § 550(a)(1); and count
4 three, preparing a false insurance claim in violation of § 550(a)(5). It was further alleged that during
5 the commission of the above offenses petitioner was out of custody on bail on felony insurance
6 fraud, a violation of § 550(a)(1), within the meaning of § 12022.1. It was also alleged that petitioner
7 had been convicted of two prior felony convictions for which he had served prison terms within the
8 meaning of § 667.5(b). 1 CT 124-27.

9 On May 11, 2005, petitioner admitted the further allegation enhancements. 1 CT 164.

10 On May 18, 2005, a jury found petitioner not guilty of count one and guilty of counts two
11 and three. 1 CT 191-96.

12 On June 15, 2005, petitioner was sentenced to state prison for a term of five years
13 consecutive to a prior prison term of five years, for a total prison term of ten years, as follows: one
14 year consisting of one-third of the midterm for count two, plus two years under § 12022.1, plus two
15 years consisting of one year for each prior felony conviction enhancement under § 667.5(b). The
16 midterm sentence for count three was stayed under § 654. 1 CT 238-40, 243A-C.

17 On September 28, 2006, the California Court of Appeal, Sixth Appellate District, affirmed
18 the judgment. Exh. F.

19 On January 17, 2007, the California Supreme Court denied petitioner's petition for review.
20 Exh. H.

21 On June 21, 2007, petitioner filed a petition for writ of habeas corpus in the United States
22 District Court for the Eastern District of California.

23 On June 28, 2007, that Court ordered the petition transferred to this Court.

24 On November 20, 2007, this Court issued an order to show cause.

25 ///

26
27
28 1. Unspecified statutory references are to the California Penal Code.

1 **II.**

2 **VERIFICATION**

3 Petitioner signed but did not verify the petition.

4 **III.**

5 **GENERAL AND SPECIFIC DENIALS**

6 Respondent denies that the state court's rulings were based on unreasonable
 7 determinations of facts or were contrary to or involved an unreasonable application of clearly
 8 established United States Supreme Court law. Respondent specifically denies petitioner's claims
 9 as follows: one, the trial court denied petitioner his right to present a defense by excluding evidence
 10 of insurance industry practices; two, the court's failure to provide accurate instructions on the
 11 elements of the crime violated petitioner's rights under the Fifth, Sixth, and Fourteenth
 12 Amendments; three, trial counsel was ineffective under the Sixth Amendment; and four, cumulative
 13 error.

14 **IV.**

15 **PROCEDURAL ISSUES**

16 Petitioner exhausted state remedies for his claims that are contained in the petition.
 17 Petitioner filed his petition within the one-year statute of limitations period set by 28 U.S.C. §
 18 2244(d). Petitioner's claim that he was denied the right to present a defense is procedurally
 19 defaulted.

20 **V.**

21 **LODGED DOCUMENTS**

22 Respondent is lodging concurrently with this answer the following exhibits:

23 EXHIBIT A Clerk's Transcript (1 vol.), *People v. Hooks*, Santa Clara County Case No.
 CC448196.

24 EXHIBIT B Reporter's Transcript (4 vols.), *People v. Hooks*, Santa Clara County Case No.
 25 CC448196.

26 EXHIBIT C Appellant's Opening Brief, *People v. Hooks*, California Court of Appeal Case
 27 No. H028971.

28 EXHIBIT D Respondent's Brief, *People v. Hooks*, California Court of Appeal Case No.
 H028971.

EXHIBIT E Appellant's Reply Brief, *People v. Hooks*, California Court of Appeal Case No. H028971.

EXHIBIT F Opinion, *People v. Hooks*, California Court of Appeal Case No. H028971.

EXHIBIT G Petition For Review, *People v. Hooks*, California Supreme Court Case No. S147629.

EXHIBIT H Denial Of Review, *People v. Hooks*, California Supreme Court Case No. S147629.

VI.

INCORPORATION BY REFERENCE

Respondent hereby incorporates by reference the accompanying memorandum of points and authorities in support of this answer.

VII.

CONCLUSION

Respondent respectfully requests that the petition for writ of habeas corpus be denied with prejudice.

Dated: December 12, 2007

Respectfully submitted,

EDMUND G. BROWN JR.
Attorney General of the State of California

DANE R. GILLETTE
Chief Assistant Attorney General

GERALD A. ENGLER
Senior Assistant Attorney General

PEGGY S. RUFFRA
Supervising Deputy Attorney General

/s/ Allen R. Crown
ALLEN R. CROWN
Deputy Attorney General
Attorneys for Respondent